

Certificate of Mailing or Transmission

I, the undersigned, hereby certify that this correspondence along with other possible documents has been deposited with the U.S. Postal Service by express mail, postage pre-paid, in an envelope addressed to The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 and having express mail number \_\_\_\_\_, or facsimile transmitted to the U.S. Patent and Trademark Office or electronically transmitted to the USPTO through its own EFS filing system on March 24, 2008.

Typed Name:

Kevin D. McCarthy

Date:

March 24, 2008

Patent 0-06-172 (17660/US/04 CIP)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Bron et al.  
Serial no.: 10/588,398  
Int. Filed: May 30, 2005  
Submitted to USPTO: August 3, 2006  
Title: SCORCH PREVENTION IN FLEXIBLE  
POLYURETHANE FOAMS  
Examiner: N/A  
Art Unit: N/A

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir/Madam:

**Response to Notice of Incomplete Reply and Preliminary Amendment**

On March 20, 2008, the USPTO mailed a Notice of Incomplete Reply that stated, "The U.S. Patent and Trademark Office has received your reply on 11/14/2006 to the Notice to File Missing Parts (Notice) mailed 03/20/2008 and it has been entered into the nonprovisional application. The reply does not include the [total additional fee(s) required for this application is \$1390 for a non-small entity] required in the Notice."

The alleged additional fees are as follows:

\$510 for a search fee  
\$210 for 1 independent claim over 3  
\$400 for 14 total claims over 20  
\$370 for multiple dependent claim surcharge

Applicant will pay the search fee.

Applicant respectfully traverses the USPTO's demand for the additional claim fees. It appears the USPTO has not considered the 24 page preliminary amendment that was submitted to the USPTO on August 3, 2006. That amendment is submitted as Exhibit A.

To confirm that preliminary amendment was timely submitted, we enclose a copy of the returned postcard (Exhibit B) that the USPTO provided us that confirms it received the 24 page preliminary amendment with the original submission of the application. That postcard has not been altered by the USPTO.

To further confirm the USPTO received the 24 page preliminary amendment with the original submission of the application, we enclose a copy of the transmittal letter

(Exhibit C) that confirms the preliminary amendment was submitted with the original application.

Moreover, the USPTO further sent a Notification of Missing Parts (Exhibit D) that confirms the USPTO received the preliminary amendment on August 3, 2006.

In view of all this evidence, it appears the additional claim fees are not required since the applicant paid the proper claim fees upon submission of the original submission.


If our understanding is erroneous, we respectfully request the USPTO reconsider its demand in view of the August 3, 2006, 24-page preliminary amendment that lowered the total claims to 26, lowered the independent claims to 2, and eliminated all multiple dependent claims; and if the reconsideration is denied to provide us with additional time to pay the alleged claim fees.

We also respectfully request the USPTO publish the correct specification - the amended version, not the published PCT application - pursuant to the original submission.

Since the USPTO acknowledged the Notice was mailed on March 20, 2008, it is assumed no additional surcharges are applicable if the response is filed prior to May 20, 2008. Accordingly, no late fees are being submitted.

Applicant also wants to confirm the claim of priority as set forth in the filing receipt since it has received no confirmation from the USPTO about its petition to amend the same. Please amend the specification as set forth at page 3 of this document.

Respectfully submitted



Kevin D. McCarthy

Reg. No. 35,278

Roach, Brown, McCarthy & Gruber, P.C.  
1920 Liberty Building - 424 Main Street  
Buffalo, New York 14202